

An Overview of The State Environmental Policy Act

Phil Ferester, Asst. Attorney General
Ecology Division, WA AGO
360-586-4606; philf1@atg.wa.gov

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Presentation Overview

What is SEPA?

- Where did SEPA come from?
- What is SEPA all about—what's the point?
- How does the SEPA process work?
- For this presentation, "agency" means a state, county, or local governmental entity subject to SEPA.

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SEPA Process and Origins

- The State Environmental Policy Act (SEPA) is a process-oriented approach for reviewing the environmental aspects of proposals that require permits or other forms of agency approval.
- SEPA was modeled after the National Environmental Policy Act (NEPA) and was first adopted in 1971.
- The State Environmental Policy Act (Chapter 43.21C RCW) is implemented through the Department of Ecology SEPA Rules (Chapter 197-11 WAC) which became effective in 1984.

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Why is SEPA important?



SEPA --

- ❖ forces agencies to consider the environmental consequences of their proposed actions;
- ❖ requires agencies to identify potential significant environmental impacts, mitigation measures, and unavoidable impacts of proposed actions; and
- ❖ helps agencies consider reasonable alternatives, mitigate adverse impacts, and involve the public.

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SEPA Is Not A Permit

SEPA is a process and a tool for evaluating impacts to all **elements** of the environment.



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WAC 197-11-444 lists the *natural elements* of the environment as:



a. Earth



b. Air



c. Water



d. Plants and
Animals



e. Energy and
Natural Resources

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and the *built elements* of the environment
(human interaction with environment) as:



a. Environmental Health
(noise, explosion, toxics)



b. Land and
Shoreline Use



c. Transportation



d. Public Services and Utilities

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SEPA Action—does SEPA apply?

A SEPA action (WAC 197-11-704) is defined to include a wide range of governmental decisions.

SEPA Actions can be:

- **Project actions:** site-specific activities that modify the environment, e.g., construction or other permitting decisions, waste site clean-up, & timber sales from public lands.
- **Non-project actions:** adoption of plans, policies, programs, or regulations containing standards that will control the use of the environment for future projects, e.g., shoreline master programs, comprehensive planning, adoption of Habitat Conservation Plan for public lands.

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SEPA Exemptions

- SEPA exemptions exist in statutes & rules.
- Tricky aspect to **rule** exemptions—an exemption created under one rule may be lost under another (see WAC 197-11-305).
 - Some exempt actions within critical areas designated by local governments in a critical areas ordinance;
 - A series of physically or functionally related actions, when some are exempt and some aren't;
 - A series of physically or functionally related exempt actions that, when taken together, may have a probable significant adverse environmental impact.

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Who should be the SEPA “Lead Agency?”

The Lead Agency is determined by several different factors such as:

- The complete range of proposed actions.
- Authority to approve, license, or finance a proposal.
- Agencies are usually SEPA lead for their own proposals.
- Local government is the usual lead for private proposals.
- The lead agency list at WAC 197-11-936 is used for private projects when there are no local approvals, but several agencies who will issue permits.
- Multiple agencies with jurisdiction may mutually agree who should be the lead.

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Lead Agency Roles

The SEPA Lead Agency is the entity responsible for complying with the SEPA process and ensuring adequacy of the environmental review.

The Lead Agency's responsibilities include:

- compiling & assessing information on all environmental aspects of the proposal for all agencies with jurisdiction;
- identifying data gaps & soliciting additional information or studies about the proposed action;
- conducting outreach by identifying interested parties and carrying out public meetings when appropriate;
- ultimate responsibility for content of all environmental documents, regardless of who initially prepared them.
- See WAC 197-11-050, 197-11-922 through -948.

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"Threshold determination"

If SEPA applies and there is no exemption, then what?

The lead agency must make a "threshold determination."
WAC 197-11-310 & -.330.



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SEPA checklist

- The threshold determination is aided by what's called an environmental checklist. See WAC 197-11-315; WAC 197-11-960.
- The environmental checklist is completed by the applicant or the agency initiating the proposal.
- "Show your work." If legally challenged, an agency's procedural compliance with SEPA may stand or fall on the contents of its environmental documents (incl. checklists).

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What is the threshold?

- Whether the proposal is likely to have a probable significant adverse environmental impact. WAC 197-11-330(1) (b).
- Probable . . . ?
- Significant . . . ?

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Probable...

“Likely or reasonably likely to occur.... Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative....” WAC 197-11-782.

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Significant...

“A reasonable likelihood of more than a moderate adverse impact on environmental quality. . . . Significance involves context and intensity. . . . The severity of an impact should be weighed along with the likelihood of occurrence.” WAC 197-11-794(1) and (2).

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Threshold Determination – Possible Outcomes

- A **Determination of Nonsignificance** (DNS) is a finding that significant impacts are unlikely. WAC 197-11-340.
- A **Mitigated Determination of Nonsignificance** (MDNS) is used when measures are added to a proposal that avoid or reduce (mitigate) otherwise significant adverse impacts to insignificant levels. WAC 197-11-350.
- A **Determination of Significance** (DS) is used when significant impacts are likely, and an Environmental Impact Statement (EIS) is required. WAC 197-11-360.

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“If we have to do an EIS, then what?”

The first step is called *scoping*.

- What are the aspects of the project that are anticipated to have significant environmental impacts?
- The lead agency narrows the scope of the EIS to address only the probable significant adverse impacts and reasonable alternatives, including mitigation measures.

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Draft EIS

- Contains or incorporates by reference all of agency's environmental analysis regarding the proposal.
- Includes other "reasonable alternatives," and usually identifies the agency's preferred alternative.
- Describes mitigation measures for significant adverse impacts.
- Subject to minimum 30 day comment period.
- May require at least one public meeting – hearing provides additional comments for agency to consider.
- For contents list, see WAC 197-11-440. Applies to both DEISs and FEISs.

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Final EIS

- The Final EIS provides environmental information about the proposal to the decision makers; it should be read & used by agency decision-makers, not just the RO. WAC 197-11-448(1); 197-11-655.
- Agency must consider *and respond* to comments (responses published in the FEIS). WAC 197-11-560.
- The FEIS is normally completed within 60 days from end of comment period on DEIS unless project or its impacts are unusually complex. WAC 197-11-460(6).
- Mandatory seven-day waiting period after issuance of an FEIS before agency can act. WAC 197-11-460(5).
- Environmental information is only one aspect of agency's total decision-making. WAC 197-11-448.

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Supplemental EIS

- SEIS can be done after either draft or a final EIS.
- Done when substantial changes are made to a proposal which have (new) impacts not previously considered, or when new information surfaces regarding the analysis of significant impacts.
WAC 197-11-405(4)(d); 197-11-620.

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“Substantive SEPA”

Q: Can an agency force mitigation or changes to a proposal based solely upon environmental impacts identified and analyzed in SEPA documents?

A: Yes, a project may be allowed only under the conditions specified in a permit, or a permit may even be denied when significant impacts can't be mitigated.

HOWEVER, an agency may only do that based on pre-existing SEPA policies (rules) that spell-out the circumstances under which such authority may be used. Any required mitigation measures must be reasonable and capable of being accomplished.
RCW 43.21C.060; WAC 197-11-660.

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Appeals

- SEPA's appeals provisions are among its most confusing. RCW 43.21C.075; WAC 197-11-680.
- All claims of faulty SEPA process, analysis or decision making *must* be linked with a challenge to the underlying governmental action.
- An agency can specify by their own rule an administrative appeal process for their SEPA determinations.

SEPA: Don't leave home (or start your project) without it....

Additional Resources:

- Ecology's SEPA Homepage, including links to the SEPA Handbook:
www.ecy.wa.gov/programs/sea/sepa/e-review.html
- Library Materials:
 - Richard L. Settle, The WA State Env'tl. Policy Act
 - Daniel R. Mandelker, NEPA Law and Litigation
- Council on Environmental Quality – "NEPANet":
<http://ceq.eh.doe.gov/nepa/nepanet.htm>
- California: <http://ceres.ca.gov/ceqa/index.html>
- New York: <http://www.dec.ny.gov/public/357.html>